

IN THE MATTER OF THE
CANCELLATION OF PROGRESSIVE
NORTHERN INSURANCE CO.
POLICY NO. 27295017-9
ISSUED TO: JOHN SMOLINSKI

HEARING NO. 09-HR-1220

TO: John Smolinski
146 N. Edgewood Ave.
Wooddale, Illinois 60191

Bradley C. Nahrstadt, Attorney
Williams Montgomery & John Ltd.
233 S. Wacker Dr., Suite 6100
Chicago, Illinois 60606

ORDER

I, Michael T. McRaith, Director of Insurance for the State of Illinois, hereby certify that I have read the Findings of Fact, Conclusions and Recommendations of the Hearing officer, Helen Kim, heretofore appointed and designated pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402) to conduct a hearing into the above-captioned matter, and that I have carefully considered the Findings, Conclusions and Recommendations of the Hearing Officer.

I, Michael T. McRaith, Director of Insurance for the State of Illinois, being fully advised in the premises, do hereby adopt said Findings of Fact, Conclusions and Recommendations as my own, and based upon the same, enter the following Order under the authority granted me by the applicable sections of the Illinois Insurance Code, and do hereby ratify, approve and confirm the Findings of Fact, Conclusions and Recommendations made by the Hearing Officer attached hereto and made part hereof.


IT IS THEREFORE ORDERED that the cancellation of the Progressive Northern Insurance Company Policy Number 27295017-9 issued to John Smolinski was not in violation of any applicable provisions of the Illinois Insurance Code, and that the cancellation shall be effective 30 days from the date of this Order.

IT IS FURTHER ORDERED that Progressive Northern Insurance Company is entitled to a premium for any extension of coverage, and such extension of coverage is contingent upon payment of such premium.

IT IS FURTHER ORDERED that the costs of this Hearing shall be waived.

DEPARTMENT OF INSURANCE
State of Illinois

DATE: 25 February 2010


Michael T. McRaith
Director

STATE OF ILLINOIS

DEPARTMENT OF INSURANCE



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FINDINGS OF FACT, CONCLUSIONS OF LAW **AND RECOMMENDATIONS OF** **THE HEARING OFFICER**

The above-captioned matter was called for a hearing in Chicago, Illinois at 10:00 a.m. on January 26, 2010 before Helen Kim, acting as Hearing Officer, pursuant to the designation and appointment of Michael T. McRaith, the Director of Insurance of the State of Illinois (Director). The Complainant, John Smolinski; and the Respondent, Progressive Northern Insurance Company represented by Attorney, Bradley C. Nahrstadt, appeared and gave evidence. Having heard and considered all of the evidence and testimony offered at the aforesaid Hearing and having been otherwise fully advised in the premises the Hearing Officer submits the following Findings, Conclusions and Recommendations to the Director of Insurance:

FINDINGS OF FACTS

1. The Complainant John P. Smolinski is an Illinois resident owning property located at 146 N. Edgewood Ave., Wooddale, Illinois 60191 and the Respondent, Progressive Northern Insurance Company, is an insurer licensed to write property and casualty risks in this State.
2. Coverage under Policy Number 27295017-9 was issued by Respondent. On October 27, 2009 the Respondent mailed a Notice of Cancellation on the above policy number to the Complainant's address of 146 N. Edgewood Ave., Wooddale, Illinois 60191.
3. The Notice of Cancellation (Hearing Officer Exhibit #3) was issued by Respondent thirty (30) days prior to the effective date of cancellation of November 28, 2009 and contained the following reason for the Respondent's decision to cancel the policy:

"An operator who either resides in the same household or customarily operates an automobile insured under such policy has, within the 12 months prior to the Notice of Cancellation, had his driver's license under suspension or revocation."
4. The Complainant submitted a request for a Hearing with the Department of Insurance (Department) on October 29, 2009 (Hearing Officer Exhibit #4).
5. On December 2, 2009 the Director issued a Notice of Hearing in this matter setting an original hearing date of January 6, 2010 at the Department's Offices in Chicago, Illinois and appointed Helen Kim as Hearing Officer in this matter (Hearing Officer Exhibits #1 and #2).
6. On December 22, 2009 the Department received a Notice of Appearance from Bradley C. Nahrstadt of Williams Montgomery & John Ltd., as Counsel for the Respondent and a Motion to Continue the Hearing (Hearing Officer Exhibit #5).
7. On December 23, 2009 the Hearing Officer issued an Order continuing the Hearing to January 26, 2010 (Hearing Officer Exhibit #6).
8. The Complainant, John Smolinski, testified in this matter as follows:
 - a) His son's name is John S. Smolinski (John Jr.) and his birthday is December 13, 1987. He is 22 years old;
 - b) John Jr. did not live in the household but temporarily lived in his household and there were a couple of claims through him. He drove the vehicle less than 12 times a year;

- c) He told Respondent that John Jr. drove the vehicle 1-2 times a month and that John Jr. was living in the household for only a few months. The Respondent told him they would continue with the cancellation even after he told them that his son is not living in the household and should not be considered;
- d) John Jr.'s license was suspended for six months from May 2009-November 2009;
- e) The Respondent renewed his policy multiple times since 2005; the last renewal was October 14, 2009;
- f) On June 28, 2009 he contacted the Respondent and requested that a 2002 Chevy Prism be added as a covered vehicle and it was added as an covered vehicle;
- g) His address is 146 N. Edgewood Ave., Wooddale, Illinois;
- h) John Jr. lived with him for a couple of months and during the period the claims were made, approximately June 2009 – September 2009. Prior to that his son was living in Chicago and presently resides at 3544 N. Ozark, Chicago, Illinois;
- i) If John Jr. has gotten into accidents and the police asked for his address, John Jr. may have given them his address but that doesn't mean his son lives at the household;
- j) The vehicle [Chevrolet Prism] is no longer his vehicle or insured by the Respondent, he removed it from the policy after the notice of cancellation and when he requested the hearing; and
- k) He excluded his son as a driver when he received the notice that his premiums were increased (Respondent Exhibits #7 and #12).

9. Bradley C. Nahrstadt on behalf of the Respondent stated as follows:

- a) The Complainant was first issued a policy from Respondent on April 14 2005, Policy No. 27295017-0, which provided coverage for him and members of his household. This policy was renewed nine times and the last renewal was for the period covering October 14, 2009-April 14, 2010;
- b) On June 28, 2009 the Complainant notified Respondent that he wanted to make a change to Policy No. 27295017-7 by adding a 2002 Chevrolet Prism as a covered vehicle under the policy (see Respondent Exhibit #1);

- c) The policy was renewed in September 2009 resulting in an amendment to the policy number, to reflect Policy No. 27295017-9 (Respondent Exhibit #2);
- d) The 2002 Chevrolet Prism is owned by John S. Smolinski (Respondent Exhibit #3);
- e) Between June 2009 and September 2009, the timeframe in which the Complainant's son was living in his residence, the son was involved in four separate car accidents (Respondent Exhibits #4-6, #11);
- f) In October 20, 2009 the Respondent sent the Complainant a revised renewal declaration page and it listed as drivers and household residents, the Complainant and John Jr. (Respondent Exhibit #7). At no time was the Respondent informed by the Complainant that his son was no longer a resident of the household;
- g) In the process of investigating claims involving John Jr. it came to Respondent's attention that John Jr. was a resident of household and driving with a suspended license and the Respondent issued a notice of cancellation (Respondent Exhibit #8) based on Section 143.19 of the Illinois Insurance Code;
- h) On November 30, 2009 the Complainant applied for a policy of insurance with a separate Progressive entity and in his application he listed John Jr. as a resident relative, regular driver of an insured vehicle or a child who drives the insured vehicle even occasionally (Respondent Exhibit #9) and a policy was issued based on this application (Respondent Exhibit #10);
- i) John Jr. listed his home address at the end of December 2009 as 146 North Edgewood Ave. (Respondent Exhibit #11);
- j) John Jr.'s driver's license was suspended from May 26, 2009 to November 26, 2009 and he was ticketed on at least two occasions during that time;
- k) "Drivers status excluded" (referring to Respondent Exhibits #9-11) means that the John Jr. is not a covered risk under the policy but an excluded risk and is not an operator that the company is willing to insure and has nothing to do with whether or not he is one who drives a vehicle or lives in the household; and
- l) John Jr. was a resident of the household or a regular operator of the vehicle at the time of the cancellation.

CONCLUSIONS

1. The Director of Insurance has jurisdiction of the subject matter and parties to the proceeding.
2. Section 143.19 of the Illinois Insurance Code (215 ILCS 5/143.19) states in part the following:

Cancellation of Automobile Insurance Policy - Grounds. After a policy of automobile insurance as defined in Section 143.13(a) has been effective for 60 days, or if such policy is a renewal policy, the insurer shall not exercise its right to cancel such policy except for one or more of the following reasons:

...

f. The named insurance or any other operator who either resides in the same household or customarily operates an automobile insured under such policy:

1. has, within the 12 months prior to the notice of cancellation, had his driver's license under suspension or revocation...

The evidence presented indicates that the Complainant's Policy No. 27295017-9 was renewed in October 2009 (Respondent Exhibit #7). The Complainant's son, John Jr. was involved in three accidents while his driver's license was suspended from May 26, 2009 to November 26, 2009 and on each traffic report the Complainant's address of 146 Edgewood Ave. was listed as the address of John Jr. and that of the owner of the Chevrolet Prism (John Jr.) (Respondent Exhibit #4-6). By his own admission the Complainant testified that John Jr. resided with him and/or that he drove his vehicle during the period claims were made. The Complainant's position is that his son resided with him temporarily for only a few months and occasionally drove his vehicle. However, somewhat contradictory, the Complainant also testified that just because John Jr. may have provided Complainant's address when asked, that necessarily did not imply that John Jr. was living with him. Whether it was for a few months or more, it is undisputed that John Jr. resided at the Complainant's household and/or drove the Complainant's vehicle. Based on the evidence and testimony the Respondent was within their right to cancel Complainant's policy pursuant to Section 143.19 of the Illinois Insurance Code.

3. The Respondent gave the required 30-day notice of cancellation as set forth in Section 143.15 of the Illinois Insurance Code (215 ILCS 5/143.15).

RECOMMENDATIONS

1. That the cancellation by Progressive Northern Insurance Company Policy Number 27295017-9 was not contrary to the applicable provisions of the Illinois Insurance Code and therefore valid.
2. That the cost of this hearing be waived.

Respectfully submitted,

Date: Jan. 29, 2010



Helen Kim
Hearing Officer